

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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**STATE OF WISCONSIN**  
**BEFORE THE REAL ESTATE BOARD**

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**IN THE MATTER OF THE DISCIPLINARY**

**PROCEEDINGS AGAINST:**

**WILLIAM O. OESTREICH,**  
**RESPONDENT.**

**FINAL DECISION AND ORDER**  
**LS0007273REB**

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The parties to this action for the purpose of Wis. Stats. sec. 227.53 are:

*William O. Oestreich*  
*PO Box 161*  
*Loyal, WI 54446*

*Wisconsin Real Estate Board*  
*P.O. Box 8935*  
*Madison, WI 53708*

*Department of Regulation and Licensing*  
*Division of Enforcement*  
*P.O. Box 8935*  
*Madison, WI 53708-8935*

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

**FINDINGS OF FACT**

1. William O. Oestreich (Oestreich), date of birth 05/19/1944, is licensed in the State of Wisconsin as a real estate salesperson having license number 94-35573. This license was first granted to him on June 3, 1991. Oestreich's most recent address on file with the Department of Regulation and Licensing is PO Box 161, Loyal, WI 54446.
2. Duane R. Wepfer (Wepfer), date of birth 06/11/1954, is licensed in the State of Wisconsin as a real estate broker having license number 90-33176. This license was first granted to him on October 15, 1984. Wepfer's most recent address on file with the Department of Regulation and Licensing is 419 North 4<sup>th</sup> Street, Abbotsford, WI 54405.
3. Dairyland Realty, Inc., (Dairyland) is licensed as a real estate corporation having State of Wisconsin license number 91-26086. This license was first granted to it on September 14, 1981. Dairyland's most recent address on file with the Department of Regulation and Licensing is 418 North 4<sup>th</sup> Street, Abbotsford, WI 54405.
4. Wepfer is the President of Dairyland.
5. At all times relevant hereto, Wepfer was the supervising broker of Oestreich.
6. On or about November 21, 1994 Dairyland obtained a WB-2 FARM LISTING CONTRACT-EXCLUSIVE RIGHT TO SELL for the marketing of a 160 acre farm owned by Jay Hoppenworth and Christine Hoppenworth. This farmland is located in the Town of Wien in Marathon County, Wisconsin. This farm property is referred to hereafter as the "Wien property". The listing price was \$250,000.00 with a commission of seven (7%) percent. The value of the personal property, if included in the sale, would increase the sale price. Oestreich drafted this listing contract as

an employee of Dairyland.

7. This listing was subsequently extended to November 21, 1997.

8. The actual owner of the Wien property was Top Dairy, Inc., a corporation owned by the Hoppenworths. Oestreich failed to indicate in the contract that the true owner of the property was a corporation.

9. On or about March 18, 1996 Dairyland obtained a WB-2 FARM LISTING CONTRACT-EXCLUSIVE RIGHT TO SELL for the marketing of a Sauk County farm owned by Richard M. Newlun and LuAnn K. Newlun. This farm property is referred to hereafter as the "Sauk property". The listing price was \$285,000.00 with a commission of five (5%) percent. Oestreich drafted this listing contract.

10. The Hoppenworths, through marketing efforts of Dairyland, agreed to exchange the Wien property for the Sauk property owned by the Newluns. The Wien property was valued at \$265,000.00 and the Sauk property was valued at \$285,000.00 for purposes of this exchange.

11. One of the agreements drafted by Oestreich as an employee of Dairyland and during the course of his acting as agent of both seller and buyer in this transaction consisted of a February 27, 1997 "Addendum A", a copy of which is attached hereto as **Exhibit A**, and made a part of this document by this reference. The terms of this addendum are ambiguous and uncertain and have led to litigation between the parties to this transaction as well as litigation against Dairyland and Oestreich.

12. One of the agreements between the Newluns and the Hoppenworths involved the early occupancy of the Wien farm by the Newluns, including the use of farm buildings for the farm business operated by Newluns. Oestreich failed to place any of the terms of this early occupancy into writing. This early occupancy resulted in disputes between the parties relating to the condition of the Wien property and the early use of the property.

13. A seven (7%) percent commission on the \$265,000.00 value of the Wien property equals \$18,550.00.

14. A five (5%) percent commission on the \$285,000.00 value of the Sauk property equals \$14,250.00.

15. The closing of this exchange transaction took place on March 31, 1997.

16. The closing statement for this exchange transaction are attached hereto as

**Exhibit B**, and is incorporated herein by this reference. This closing statement shows Dairyland as receiving a commission of \$14,250.00 from the Newluns on the Sauk property and reflects no commission being paid by the Hoppenworths on the Wien property.

17. At closing, Oestreich appeared as the representative of Dairyland.

18. At the closing, Dairyland received as its commission on the Sauk property \$11,564.14 rather than the \$14,250.00 shown on the closing statement. Oestreich drafted nothing to reflect the actual commission paid at closing or the agreement as to payment of the balance of the commission on the Sauk property.

19. At the time of closing, Oestreich entered into a verbal agreement with Hoppenworth regarding payment of the commission owed to Dairyland. This verbal agreement included a term that Oestreich would take personal possession of a farm tractor owned by Hoppenworth and valued at \$19,500.00 as payment of the commission share claimed by Oestreich. Oestreich verbally agreed to personally pay back to Hoppenworth approximately \$4,000.00.

20. Nothing was placed into writing by Oestreich regarding this agreement to change the commission agreement between Dairyland and Hoppenworth.

21. Shortly after the March 31, 1997 closing, Oestreich sold the tractor to a farmer named Foley with an agreement that Foley would make five annual payments to Oestreich of \$5,000.00 each.

22. In or about October, 1997 Hoppenworth, not having received any payment from Oestreich, took the tractor from Foley under the pretense of renting it.

23. As a consequence of Hoppenworth's taking the tractor from Foley, Hoppenworth was questioned by the Sheriff's office of Marathon County regarding Oestreich's claim that Hoppenworth stole the tractor.

24. Shortly after the above described March 31, 1997 closing, Oestreich's employment with Dairyland was terminated.

25. Oestreich brought a civil suit against Hoppenworth in case 98 CV 179 in the Circuit Court for Marathon County, for payment of 15,000.00 in loss of commission from the above described exchange of property.

26. On March 16, 2000 the Honorable Dorothy L. Bain, Circuit Judge in and for Marathon County dismissed Oestreich's claim. A copy of Judge Bain's Decision dismissing Oestreich's claim is attached hereto as **Exhibit C** and is incorporated herein by reference. Judge Bain found that Oestreich had not right to claim commission from Hoppenworth. If a right to a commission existed, that right belongs to Dairyland.

### **CONCLUSIONS OF LAW**

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to section 452.14, Wis. Stats.
2. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to section 227.44(5), Wis. Stats.
3. Respondent William O. Oestreich has violated:
  - a. Section 452.14(3)(f) of the Wisconsin Statutes by accepting from a person other than his employer valuable consideration for the performance of brokerage services.
  - b. Sections RL 24.03(2)(b) and (c), 24.08 and 24.17(1) of the Wisconsin Administrative Code and sections 240.10(1) and 452.14(3)(i) of the Wisconsin Statutes by taking possession of a tractor owned by a client of Dairyland in payment directly to him of a commission and, upon the loss of that tractor back to the Hoppenworths, instigating a civil law suit against the Hoppenworths in an effort to obtain a commission not owing to him by the Hoppenworths.
  - c. Sections RL 24.03(2)(b) and 24.08 of the Wisconsin Administrative Code and section 452.14(3)(i) of the Wisconsin Statutes by failing to place into writing the exact terms of the commission agreement he claims to have entered into with the Hoppenworths and the change in the commission agreement with the Newluns and by failing to have the true corporate owner of the Wien property stated on the listing contract and other agreements he drafted in relation to this transaction.
  - d. Sections RL 24.03(2)(b) and 24.08 of the Wisconsin Administrative Code and section 452.14(3)(i) of the Wisconsin Statutes by failing to place into writing the exact terms of the agreements between the parties related to those items shown on Addendum A and those verbal items relating to early occupancy and business use of the Wien property.
  - e. Sections 452.133(1)(b) and 452.14(3)(L) of the Wisconsin Statutes by failing to diligently exercise reasonable skill and care in providing brokerage services to all parties.
  - f. Sections 452.14(3)(k) of the Wisconsin Statutes by engaging in conduct that constitutes improper, fraudulent or dishonest dealing.

### **ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is hereby accepted.

IT IS FURTHER ORDERED, that the real estate license of Respondent

**William O. Oestreich**, real estate salesperson license # 94-35573, is hereby **SUSPENDED** for a period of six months. This suspension shall commence at 12:01 a.m. on the day following the date of this Order as set forth below.

IT IS FURTHER ORDERED, that Respondent William O. Oestreich, within six months of the date of this Order, successfully complete the entire 72 hour prelicensing real estate salesperson course at an educational institution approved by the Department of Regulation and Licensing.

Oestreich shall submit proof of the same in the form of verification from the institution providing the education to the Real Estate Board, P.O. Box 8935, Madison, WI 53708-8935. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing.

IT IS FURTHER ORDERED, that in the event Respondent William O. Oestreich fails to successfully complete the educational requirements within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent William O. Oestreich, his real estate license shall continue to be suspended without further hearing and without further Order of the Board, and said suspension shall continue until further order of the Board. Any failure to complete the educational requirements and report the same as set forth herein shall be considered by the Board to be a violation of this Order.

IT IS FURTHER ORDERED, that Respondent William O. Oestreich, pay partial costs of \$800.00, within 30 days of the date of this Order by making payment of the same to the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708-8935.

IT IS FURTHER ORDERED, that in the event Respondent William O. Oestreich fails to pay the \$800.00 costs within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent William O. Oestreich, his real estate license shall be suspended without further hearing and without further Order of the Board, and said suspension shall continue until the full amount of said costs have been paid to the Department of Regulation and Licensing and his failure to pay the costs shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that investigative file 98 REB 164 be, and hereby is, closed as to William O. Oestreich, and not as to any other respondent.

Dated this 27<sup>th</sup> day of July, 2000.

**WISCONSIN REAL ESTATE BOARD**

By: James Imhoff

A member of the Board